

STATEMENT OF
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CHARTER REVIEW COMMISSION
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This testimony is to cover four topical areas:

1. Election of Council
2. Total Expense Limitation
3. Citizens Petitions
4. Powers and Duties of Elected Officials.

(1). Election of Council. I have previously submitted to you my memorandum on this subject dated January 1, 2006 and I respectfully refer you to that memo for my views as to making the Council a full time position and districting the election of its members. Since my memo was written I have concluded that term limits should be established for Council members. At present persons must be employed by the County for ten years to be eligible for a pension. I believe it would be unfair to deprive Council members whose only employment by the County is as a Council member of a pension by a term limitation shorter than ten years. The arguments pro and con about term limits are well known. On balance I believe it to be in the interests of the County to set a limit and I think that the citizens of the County should be given the opportunity to decide the question. My suggested text for the ballot issues on making the Council a full time position and election its members by district and on term limits are attached as Exhibits A and B.

(2). Total Expense Limitation. The daunting increases in recent years in the Kauai operating budget have been eye opening. The current budget of \$122.9 million is about 80% higher than it was five years ago. The inevitable connection to rising government cost is rising taxes. Kauai property taxes have soared over 100% in the last five years. It appears to many Kauai residents that our government operates inefficiently and that costs are not well controlled. The concept of imposing a spending limit for the County has been previously presented. My suggested text for a ballot issue to establish a regimen of a spending limit is attached as Exhibit C.

(3). Citizens Petitions. The right of citizens to determine how they wish to be governed is a fundamental element of democracy. The Kauai County Charter furthers this concept by expressing the right of citizens to seek through petitions four types of government action—amendment of the charter, adoption of ordinances by initiative or for their repeal by referendum, recall of elected officials and impeachment. Unfortunately in my view the terms of the charter in these regards are in a state of disarray and changes are required if the purposes of these citizens actions can be effectively utilized.

One question for examination relates to the quantum of signatures that should be required on a citizens petition. At present signatures of 20% of the registered voters are required in Article XXII (dealing with initiatives and referendums) and in Article XXVII (dealing

with recall). Signatures of 5% of the registered voters are required in Article XXIV (dealing with charter amendments) and in Section 23.13 (dealing with impeachment). I believe that the requirement of obtaining signatures from 20% of the registered voters in order to place a matter on the ballot is unreasonably high and will result in precluding any use of the initiative and referendum and recall procedures. It needs to be noted that the filing of the citizen petition is only one step in the process, the key one being obtaining the requisite majority vote at the general election. I suggest that the requirement for petition signatures in Articles XXII and XXVII be reduced to 5% of the registered voter number.

The Bills proposed by Mr. Asing (Bills 2154-6) to alter the procedures for citizens petitions have been brought to the attention of the Commission. It appears that these Bills have been abandoned. It remains, however, desirable to have standard requirements for the methodology to be used in citizen petitions. The presumably defunct Bills included provisions that would hobble the petition process. Such provisions are in my view unattractive as in the ultimate analysis the petitions are as noted only a preliminary step in presenting the matter involved for voter determination. I propose that the Charter be amended to contain the basic requirements for all petitions – its committee, the statement of the matter to be presented, and the signature and identification of the citizen. If other and not inconsistent or more onerous terms are needed they could be established by ordinance.

I would also propose the elimination of Section 22.02 which contains limitations on initiative and referendum powers and the extension of coverage of Section 27.01 to allow recall of officers serving two year terms. The present provisions unduly restrict the exercise of these citizens powers.

In regard to impeachment some history is relevant. Prior to 1989 HRS 62-13 provided for removal of elected county officials for malfeasance, misfeasance, nonfeasance or maladministration in office by circuit court following a petition by not less than 25 voters and citizens. In 1988 the state repealed this provision related to the Constitutional amendment adopting County home rule. In 1990 the County Council took advantage of this change and presented to the voters a resolution changing the Charter to provide that the number of signatures on the petition be increased to 5% of the registered voters. The change was narrowly approved by the voters. Under the Charter the Board of Ethics may also file impeachment proceedings. (Section 20.04 D (1)). I propose that the process be simplified and made less burdensome by allowing a petition containing the acts or failures to act believed to be grounds for impeachment signed by at least 100 citizens and voters be filed with the Board of Ethics and if the Board finds the charges to be sufficient for the Board to file with the Circuit Court.

If the Commission wishes I would be glad to provide a draft of the ballot text for the citizens petition changes that I propose.

(4). Powers and Duties. Finally I wish to address an area where I find the Charter as presently constituted to be seriously deficient. That area relates to the powers and duties of Kauai's elected officials and the question of accountability and sanctions for failure to perform prescribed duties.

Let me begin by mentioning three instances to illustrate where there has been a failure of implementation of actions contemplated by the Charter. First, Article XXVIII provides that there shall be a County Cost Control Commission whose members are to be appointed by the Mayor and the Council within 45 days of the beginning of the Mayor's term. No appointments have been made and the Commission is not serving. Second, Article XXIX provides for a Salary Commission to be similarly appointed. No Salary Commission is serving. Third Section 3.12 of the Charter provides for a financial audit of the County's books and accounts at least once every two years. No such audit has occurred in recent years. If the Charter can be flaunted without consequences in cases such as these what is the purpose of having a Charter?

The inadequacies of the Charter are structural. With respect to the Council the Charter (Section 3.01) endows it with legislative powers and identifies in Sections 3.07, 3.10, 3.11, and 3.12 and Articles XXVIII and XXIX certain specific duties. With respect to the Mayor Section 7.05 is captioned "Powers, Duties and Functions" but its content is limited to expression of 13 powers.

The conferral of powers on the Council and the Mayor is necessary to establish their authority. Certain powers exist which are discretionary and exercise is not required. Other powers **must** be exercised. When the exercise of a power is mandated, e.g. the power of the Mayor to submit to the Council annual operating and capital budgets, the duty to meet the mandate should exist. If there is no duty established then there are no sanctions for failure to perform. The position as to the Cost Control and Salary Commissions and as to the audit exist because there is no expressed duty imposed.

Charter Section 23.10 expresses certain sanctions for "violation of a charter provision" and other matters. But is non-performance a violation when no duty is stated?

In my view an amendment to the charter is clearly needed to specify that as to those powers where exercise of the authority is to be obliged, the elected officials have the duty to act to perform the function mandated. The completion of the cycle requires that where nonperformance or malfeasance occurs a sanction should be identified.

For these purposes I suggest that the provisions of Sections 3.07, 3.10, 3.11 and 3.12 and Articles XXVIII and XXIX and timely action of approval of appointments be identified as duties of the Council and that Section 7.05 A,B,C,E, F, G,I J, L, and M, Section 23.14 and Article XXVIII and XXIX be identified as duties of the Mayor.

Regarding Section 20.04 E I would suggest that it be a duty of the Mayor and the Council to notify the Board of Ethics of any facts known to them which might constitute a

violation of Article XX, and require the Board to take any necessary action for enforcement. This would avoid having multiple responsibilities for the same matter.

I believe that any material or willful failure by a county official to perform a duty should become grounds for impeachment of the failing party or parties and justify the commencement of impeachment proceedings in the Fifth Circuit Court. I doubt that it is helpful to also invoke Section 23.10 and say it is a misdemeanor. As noted above I believe the process by which impeachment proceedings are to be implemented should be changed. I would if the Commission so desires be prepared to offer a draft of a ballot text on the power and duty questions I have mentioned.

EXHIBIT A

Effective 2008, shall all Council members be selected by district of which there shall be five to be defined by an apportionment commission to be appointed in 2007, with one member who shall be a resident of the district elected from each district, and effective 2008, shall the service of all council members be as full time positions with members prohibited from other gainful pursuits, and shall be the salary commission set compensation for council members to be applied when full time service commences.

EXHIBIT B

Shall effective for the 2008 election no candidate be permitted to seek election to the County Council who has served more than ten consecutive years as a member of the Council.

EXHIBIT C

Shall effective for the fiscal year commencing July 1, 2007 the amount of the Kauai County operating budget be limited to being not greater than the sum of the operating budget for the preceding fiscal year plus a percentage thereof equal to the average annual increase in the population of Kauai as measured by the two most recent Federal census data and plus a percentage thereof equal to the greater of the increase in the Consumer Price Index in Honolulu during the preceding twelve months or the increase provided for average hourly wages in the collective bargaining agreement covering the most Kauai County employees during such twelve months, and shall expenditures by the County for operating costs greater than such limit be prohibited.

